

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MASSACHUSETTS**

CIVIL ACTION No.: 04-11625 RWZ

**JOAN CHARLES,**  
Plaintiff,

V.

**OCWEN FEDERAL BANK, OCWEN FINANCIAL  
CORPORATION, MASSACHUSETTS PROPERTY  
INSURANCE UNDERWRITING ASSOCIATION  
and ONE CALL INSURANCE AGENCY, INC.,  
Defendants,**

## AFFIDAVIT OF JOSEPH A. TRAGNO

I, Joseph A. Tragno, do hereby depose and state the following:

1. I am the Underwriting Manager of Massachusetts Property Insurance Underwriting Association (hereinafter referred to as "MPIUA") and in charge of underwriting records.
2. I have reviewed the Underwriting file for policy number 0662672 (hereinafter referred to as the "Policy") issued to the Plaintiff, Joan Charles, insuring the property at 14 Ditson Street, Dorchester, MA (hereinafter referred to as the "Property"). (Attached hereto as Exhibit "1" is a copy of the Declaration Sheet and HO3 Homeowners Policy with all Forms and Endorsements made part of the policy issued in January 8, 2003 for the Property).
3. The Policy was an HO3 Homeowners Policy issued for the policy period of January 8, 2003 to January 8, 2004. (See Homeowners Policy contained within Exhibit "1").
4. The premium for policy number 0662672, for the policy period of January 8, 2003 to January 8, 2004 was paid. (See Declaration Sheet contained within Exhibit "1").
5. The special endorsement HO-FP (12-01) was part of Policy number 0662672, which expired on January 8, 2004. The endorsement includes the following condition:

WE WILL NOT RENEW THIS POLICY AUTOMATICALLY. A RENEWAL OFFER/PREMIUM INVOICE WILL BE SENT TO YOU. IN ORDER TO CONTINUE COVERAGE WITHOUT INTERRUPTION,

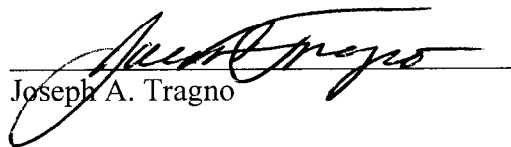
YOU MUST RETURN THE PREMIUM INVOICE WITH YOUR PAYMENT TO MASSACHUSETTS PROPERTY INSURANCE UNDERWRITING ASSOCIATION, BEFORE THE EXPIRATION DATE OF THIS POLICY. IF PAYMENT OF THE PREMIUM IS RECEIVED BY THE MASSACHUSETTS PROPERTY INSURANCE UNDERWRITING ASSOCIATION WITHIN THE TIME PERIOD PROVIDED IN THE RENEWAL OFFER/PREMIUM INVOICE, MASSACHUSETTS PROPERTY INSURANCE UNDERWRITING ASSOCIATION WILL RENEW THIS POLICY, EFFECTIVE AS OF THE DATE OF THE EXPIRATION OF THE POLICY. IF PAYMENT IS RECEIVED BY MASSACHUSETTS PROPERTY INSURANCE UNDERWRITING ASSOCIATION AFTER THE TIME PERIOD PROVIDED IN THE RENEWAL OFFER/PREMIUM INVOICE, MASSACHUSETTS PROPERTY INSURANCE UNDERWRITING ASSOCIATION WILL DETERMINE WHETHER TO PROVIDE COVERAGE, ON WHAT TERMS COVERAGE WILL BE PROVIDED AND WHEN COVERAGE WILL BECOME EFFECTIVE.

WE MAY ELECT NOT TO RENEW THIS POLICY. WE MAY DO SO BY DELIVERY TO YOU, OR MAILING TO YOU AT YOUR LAST MAILING ADDRESS, SHOWN IN THE DECLARATIONS, WRITTEN NOTICE AT LEAST 45 DAYS BEFORE THE EXPIRATION DATE OF THIS POLICY, AND TO THE MORTGAGEE SHOWN ON THE DECLARATIONS AT LEAST 10 DAYS BEFORE THE EXPIRATION DATE OF THIS POLICY. (Attached hereto as Exhibit "2" is a copy of the HO-FP (12-01)).

6. On December 4, 2003, an Expiration Premium Invoice was forwarded to Joan Charles, 14 Ditson Street, Dorchester, MA and her insurance agent, One Call Insurance Agency, Inc., 121 B Tremont Street, Brighton, MA. (Attached hereto as Exhibit "3" is a copy of the Expiration Notification and Renewal Offer/Premium Invoice).
7. MPIUA did not "elect not to renew this policy" because it issued a Renewal Offer on the Policy. (See Exhibits "2" and "3").
8. MPIUA did not receive back the premium on or before the policy expiration date of January 8, 2004.
9. The Policy expired on January 8, 2004 because of failure to pay the premium for the renewal policy. (See Exhibit "3").
10. There was no MPIUA policy in effect on February 2, 2004, which is the date of the incident.

11. MPIUA will not issue an HO3 Homeowners Policy if the property sought to be insured has a known risk. The most basic premise of underwriting is that an insurer will not insure a known or existing loss. MPIUA did not and would not, under its underwriting guidelines, issue a policy on February 2, 2004 insuring Ms. Charles against a fire which had already occurred on the Property.
12. The business hours of the MPIUA in February 2004 were Monday through Friday, 8:00 a.m. to 4:00 p.m.. The doors of the business closed at 4:00 p.m. and no applications were accepted after 4:00 p.m..
13. MPIUA does not issue premium invoices and/or renewal offers to mortgagees. No contract provision, regulation, statute or case law I am aware of requires MPIUA to issue premium invoices or renewal offers to mortgagees. I know that the standard practice in the insurance industry is that those notices are not issued to mortgagees. MPIUA forwards a copy of these documents to the insured and to his/her producer/insurance agent if there is one.
14. The Defendant Massachusetts Property Insurance Underwriting Association refused to pay a claim for a fire loss arising on February 3, 2004 at 14 Ditson Street, Dorchester, MA because there was no policy in effect at the time of the fire.

Signed under the pains and penalties of perjury this 20 day of June, 2006.

  
Joseph A. Tragno